

not quite sure as to the prior art basis for the unknown patent referenced as the basis for rejection, but it is presumed that such reference is somewhere within the list of references cited. Applicant respectfully disagrees with Examiner's rejection of the claims.

A rejection based upon § 103(a) must be supported by the following standard:

"To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claim combination and the reasonable expectation of its success must both be found in the prior art, and not based on the applicant's disclosure." MPEP § 2142.

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. *In Re Geiger*, 815 F.2d 686, 2 U.S.P.Q. 2d 1276 (C.A.F.C. 1987); *In Re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (C.A.F.C. 1988). Both the suggestion to make the claimed composition or device or carry out the claimed process and the reasonable expectation of success must be founded in the prior art. *In Re Vaeck*, 947 F.2d 488, 20 U.S.P.Q. 2d 1438 (C.A.F.C. 1991). The art upon which the rejections are based do not fulfill this requirement and are clearly distinguishable.

Reviewing the rejection of Claim 1, Vuillemot does indeed teach some aspects of the present invention, shown in FIGS. 1-5 of that prior art. Distinct are of course the absence of the pin hole with a recessed margin to accept the pin head of the lock pin in the outer surface of the first side plate, the lock collar attached to the outer surface of the second side plate, the keyed cylindrical lock securing to the tang and closely surrounded by the cylindrical lock collar, and the upper pin shield attached between the two side plates forming an arch over said pin holes covering the inserted

locking pin.

Exception is taken with the combined reference of Hurst. Examiner represents that Hurst “clearly teaches the advantage of providing a countersunk hole for a locking pin head to prevent tampering.” A review of Hurst discloses a recess, but the equivalent of a pin head is press stamped into the recess, and is utilized to stabilize the pin from rotation. At no place is the word tamper mentioned and it is clear that the purpose of the recess is to prevent rotation, not to prevent tampering. The present pin head is removable, over and over and required to disengage the device from the ball hitch receiver, to which the present invention is adapted, unlike the fifth wheel pin of the Hurst invention, that merely need to rotate the spindle to disengage the slide collar. Hurst is not a legitimate basis for rejection.

Exception is also taken to the improper combination of Harris and Mamo to attempt to reference the present device upper pin shield. Mamo discloses a sleeve, through which the locking pin is inserted, and it is not a permanent attachment to the Mamo device. The combination of Harris is even more appropriate, because there is no locking pin and no holes over which the shield lies. The locking hat 19 of Harris does not protect the pin from anything, because the alleged pins are locking posts that simply protrude from the inside to the outside of each side plate, with no shaft covered by the “shield”. Rejection of Claim 1 is thereby improper based upon the inapplicability of Harris, Hurst and Mamo

Addressing Claim 2, again Harris does not have a lock shield attached at both portions arching over the lock pin, because Harris does not have a lock pin and the alleged shield does not cover any portion of a locking pin shaft, nor can the alleged shield of Harris protect any portion of the pin. You can also hacksaw through the locking posts of Harris, the locking pin of Niswanger the

locking pin of Vuillemot, the lock catch of Hurst, but not the elements of Hillabush. The reason you can't hacksaw through Hillabush is because there is no locking pin and the collar is the tamper resistant element of that very limited device, which is not adapted in any way, shape or form to a ball hitch. There is no arched shield as disclosed in the present invention in any referenced prior art, and especially where "said upper pin shield further comprising:

a first end attaching to said first side plate, a second end attached to said second side plate, an upper surface arching upward from said base member and a lower surface directed towards said base member, said lower surface also arching in an upward direction, wherein said lock pin, when engaged, would be partially visible below said upper pin shield in a horizontal plane. [emphasis added to distinguish prior art from Claim 2.]

There is nothing wrong in defining something by what it does rather than by what it is. *ReEcherd*, 471 F2d. 632, 176 USPQ 321 (1973, CCPA); *Re Swinehart*, 439 F2d. 210, 169 USPQ 226 (1971, CCPA); *Re Fuetterer*, 319 F2d. 259, 138 USPQ 217 91963, CCPA). Claim 2 is improperly rejected based upon the cited references. The "shield" of Harris cannot do what Claim 2 requires it to do, nor does it protect a non-existing locking pin shaft.

References cannot be combined arbitrarily and there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin* 170 USPQ 209 (CCPA 1971).

Finally, Claim 3 is rejected by combining an undisclosed patent indicated by a question mark in the Office action, with Fazzolari. This is a track slide bolt which indeed does disclose a partial

rolling pin within the segment of the bolt that would be exposed between a door and a frame. However, since Claim 3 is dependent from Claim 1, it would be allowed where Claim 1 is allowed.

CONCLUSION

The applicant submits that the above-noted remarks put the application in condition for allowance. Applicant therefore respectfully requests that the Examiner withdraw the outstanding objections and rejections contained in the Office Action of 09/14/2005, and pass this application to issue. Applicant expresses their appreciation to the Examiner for Examiners attention and courtesy.

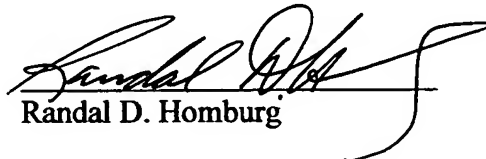
Respectfully submitted;



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